

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC HEARING

The New Mexico Environmental Improvement Board (“EIB”) will hold a public hearing after its regularly convened meeting on June 12-13, 2003 beginning at 8:30 a.m. in Room 317 of the State Capitol Building, at the corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico.

The public hearing will be held to consider proposed amendments to 20.5.1 NMAC and 20.5.9 NMAC through 20.5.16 NMAC. Any interested persons or parties are encouraged to participate or attend.

The reasons for the proposed amendments are to make Part 1 and Parts 9-16 of 20.5 NMAC consistent with legislative amendments to the Hazardous Waste Act, NMSA 1978, §§74-4-1 through 74-4-14 (“HWA”), and the Ground Water Protection Act, NMSA 1978, §§74-6B-1 through 74-6B-14 (“GWPA”). The HWA now provides regulatory authority for above ground storage tanks (“ASTs”), as it already does for underground storage tanks (“USTs”). Similarly, GWPA now provides for use of the Corrective Action Fund for corrective action at AST sites as well as UST sites, so long as certain requirements are met. Under the HWA and GWPA, the EIB is required to adopt regulations concerning “storage tanks” that include ASTs as well as USTs, pursuant to NMSA 1978, Section 74-4-4C and Section 74-6B-7.

The hearing will be conducted in accordance with 20.1.1 NMAC, the Environmental Improvement Board’s Rulemaking Procedures, promulgated pursuant to the Environmental Improvement Act, NMSA 1978, Section 74-1-9.

The proponent of the proposed amendments is the New Mexico Petroleum Storage Tank Bureau (“Bureau”) of the New Mexico Environment Department (“Department”). In summary, the Bureau proposes to amend Parts 1 and 9-16 as follows:

20.5.1 NMAC – General Provision

The proposed amendments to this part add, repeal and amend definitions as required by the changes in the following sections.

20.5.9. NMAC – Financial Responsibility

The proposed amendments to this part add financial responsibility requirements for ASTs, which will take effect in July 2007, standardize the format, and conform certain deadlines to the deadlines in GWPA.

20.5.10 NMAC – Administrative Review

The proposed amendments to this part provide AST owners and operators the same opportunity for review of department decisions that is afforded UST owners and operators, and modify the approach to hearings on requests for review. Formatting changes are also made to conform the part to NMAC requirements.

20.5.11 NMAC – Lender Liability

Rather than continue to incorporate EPA’s UST lender liability rule by reference, the text of the federal rule has been reformatted in NMAC format. Proposed amendments to this part limit the liability of lenders on ASTs and properties on which ASTs are located to the same extent as lenders on USTs and UST properties.

20.5.12 NMAC – Corrective Action for UST Systems Containing Petroleum Products

The proposed amendments to this part add corrective action requirements for ASTs, create a separate, more streamlined track for remediation by monitored natural attenuation for both ASTs and USTs, and make a number of small changes to make UST and AST corrective action more efficient and the requirements clearer. The part name is changed to “Corrective Action for Storage Tank Systems Containing Petroleum Products” to reflect the inclusion of ASTs and the text is reformatted to meet NMAC requirements.

20.5.13 NMAC – Corrective Action for UST Systems Containing Other Regulated Substances

The proposed amendments to this part update the corrective action process for hazardous substance USTs, which had not changed in some time, and reformat the text to meet NMAC requirements. Since only petroleum ASTs are regulated under the HWA and GWPA, this part is not being amended to include ASTs.

Proposed amendments conform the corrective action process for hazardous substance USTs more closely to the process outlined in 20.5.12 NMAC for petroleum tanks, including the proposed approach to monitored natural attenuation. The Bureau is not proposing to add the tiered evaluation process from Part 12.

20.5.14 NMAC – Certification of Tank Installers

The proposed amendments to this part extend the requirements to persons who install and repair ASTs (“installers”), revise the requirements for both UST and AST installers to make them more efficient and workable, and align the requirements more closely with the skills needed. Formatting changes are made to comply with NMAC requirements.

20.5.15 NMAC – Corrective Action Fund Use and Expenditures

The proposed amendments to this part incorporate ASTs into the priority setting system for corrective action fund payments, move the priority setting and financial need provisions of 20.5.17 into 20.5.15 NMAC pursuant to the 2001 amendments to GWPA, and conform the provisions on fund reserves to the 2001 amendments. As with the other parts, formatting changes are made to meet NMAC requirements.

20.5.16 NMAC – Qualification of Contractors

The proposed amendments to this part include corrective action at AST sites as well as UST sites in its provisions. They also streamline the process for qualifying persons to do corrective action, repeal the certified scientist program, change the way in which adverse determinations are appealed, and make style and format changes to comply with NMAC requirements. The title of the part is changed to “Qualification of Persons Performing Corrective Action.”

Any person may provide a general written statement concerning the regulations at or before the hearing by filing the statement with Geraldine Madrid-Chavez at Environment Department, Secretary to EIB, P.O. Box 26110, Santa Fe, New Mexico 87502. Any person may provide a general oral statement or non-technical testimony concerning the application for modification at the hearing.

Any person who intends to provide a technical written statement or technical oral testimony concerning the proposed changes to the regulations shall file a statement of intent to present technical testimony on or before **June 2, 2003**. The statement of intent to present technical testimony shall:

- Identify the person filing the statement, the witness, and the person for whom the witness will testify;
- State whether the person filing the statement supports or opposes the regulations;
- Identify each fact and/or expert witness, qualifications of each witness, including name, address, affiliations and educational work background;
- Summarize or provide a copy of any direct testimony of each witness, stating any opinions to be offered by such witness, and an explanation of the basis for such opinions, and the anticipated duration of the testimony of each witness;
- Identify all exhibits anticipated to be offered;
- List or make available all technical materials relied upon by each witness in making a statement of technical fact or opinion contained in his or her direct testimony; and
- Include the text of any recommended modifications to the proposed regulatory changes.

Interested persons may review hard copies of the proposed amendments during regular business hours at the Petroleum Storage Tank Bureau located at 2044 Galisteo Street, Suite A, in Santa Fe, New Mexico, at the Albuquerque field office located at 4131 Montgomery NE, or at the Environment Department’s web site,

www.nmenv.state.nm.us. You may also contact Jerry Schoeppner at 984-1787 to obtain hard copies if you do not have access to the Department's web site.

The EIB may make a decision on the proposed regulatory changes at the conclusion of the hearing.

If you are an individual with a disability and you require assistance or an auxiliary aide, i.e. sign language interpreter, to participate in any aspect of this hearing, please contact Cliff Hawley at (505) 827-2844, New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502 (TDD or TDY users please access this number via the New Mexico Relay Network. Albuquerque TDD uses: (505) 275-7333; outside of Albuquerque: 1-800-659-1779.